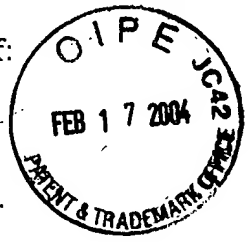
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In Re the Application of:

Sim, Gee-Kee
Yang, Shumin
Sellins, Karen S.

Serial No.: 09/646,561

Filed: September 19, 2000

Atty. File No.: IM-1-C1-PUS

For: "CANINE AND FELINE B7-2 NUCLEIC ACID MOLECULES AND USES THEREOF" (Amended)

Group Art Unit: 1644

Examiner: Jessica H. Roark

PRELIMINARY AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL ADDRESSED TO COMMISSIONER FOR PATENTS, WASHINGTON, DC 20231, THIS 23 DAY OF AUGUST 2002.

HESKA CORPORATION

By: Susan A. Gordon

Susan A. Gordon

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This response is directed to the Restriction Requirement mailed from the U.S. Patent and Trademark Office on June 17, 2002. Applicants attach hereto a Petition for a two-month extension of time along with the requisite fee. Applicants also attach a Revocation of Power of Attorney and New Appointment and request that the Attorney Docket No. be changed from HKZ-029CPUS to IM-1-C1-PUS.

Prior to the Examiner's review of the Claims of the above-referenced Application, please enter the following amendments.

Please amend the above-identified patent application as follows:

IN THE SPECIFICATION

On page 1, please delete the present title of the invention and insert therefor: --CANINE AND FELINE B7-2 NUCLEIC ACID MOLECULES AND USES THEREOF--.

On page 1, following the title of the invention, please add the following paragraph:

--Cross-Reference to Related Applications

This application claims priority to international PCT Application No. PCT/US99/06187, filed March 19, 1999; which is a continuation-in-part of U.S. Application Serial No. 09/062,597,

DETAILED ACTION

1. Applicant's amendment, filed 9/3/02, is acknowledged.
Claims 4-5, 7, 9, 15, 20, 22, 24 and 28-36 have been cancelled.
Claims 1-2, 6, 8, 10-14, 16-19, 21, 23, 25-27 and 37-38 have been amended.

Claims 1-3, 6, 8, 10-14, 16-19, 21, 23, 25-27 and 37-39 *are pending and being acted upon presently*

2. Applicant's amendment to more clearly define the elected invention is acknowledged with appreciation, as is the inclusion of a Table setting forth the relationship of the instant SEQ ID NOS.

3. Applicant's election with traverse of Group II in Paper No. 16 is acknowledged.

A) The traversal is first on the grounds that the subject matter of Groups II (canine B7-2) and IV (feline B7-2) is highly related structurally (90% identity at the nucleotide level) and shares a common function of costimulating T cell proliferation. Applicant also points out that many of the instant SEQ ID NOS also represent true fragments of the full length SEQ ID NOS.

In view of this information it appears that the canine and feline nucleic acids of the instant Markush group are more appropriately treated as Species rather than Groups.

The restriction requirement between Groups II and IV is hereby withdrawn. A supplemental species election follows.

B) The traversal is second on the grounds that the subject matter of Groups II and XXIII and Groups IV and XXV do not describe independent inventions because the methods require the products recited in Groups II and IV.

It is first noted that the instant claims were subject to restriction under 35 U.S.C. 121 and 372, and that lack of unity practice applies.

The Examiner has previously established that the groups of inventions were not so linked as to form a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lacked the same or corresponding special technical features in view of the prior art of El Tayar et al. (US Pat. No. 6,337,316, of record) (see entire document).

It is further noted that although the methods recite the products of Groups II and IV (i.e., they are related as product and process of using MPEP 806.05(h)), the methods may nevertheless be practiced with other materially different product. For instant, a method of regulating a T cell mediated immune response may be accomplished by administering antibodies to CD3, in addition to administering B7-2 nucleic acids. Thus although the methods and products are related, they are distinct.

The requirement with respect to Groups II/IV and XXIII/XXV is still deemed proper and is therefore made FINAL.